IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 132 OF 2005

STATE,THROUGH PUBLIC PROSECUTOR, PANAJI GOA ....Applicants

Versus

P.K.BHARATKUMAR, BANGALORE. ....Respondents

Shri S.N. Sardessai, P.P. for the State/Applicant.

Coram:- N. A. BRITTO, J.

Date:- 18th August, 2005

P.C.:

Heard Shri Sardessai, the learned P.P.

For the view to be taken, notice to the respondent/accused which was otherwise awaited is now dispensed with.

The respondent/accused was being prosecuted in Criminal Case No.11/S/2001 under Sections 279, 337, 338 I.P.C. and S.139 of M.V. Act, 1988. It appears that after charge was framed against the said accused and eight witnesses were examined, the case was fixed for arguments and at this stage, the learned A.P.P. appearing in the said case filed an application dated 25.8.04 for recalling P.W.7 the Investigation Officer to be examined and as the application shows, he was sought to be examined to bring certain contradictions on record regarding P.W.6, the latter having been the rider of the motorcycle who, according to the learned P.P. Shri Sardessai, was declared hostile and was cross-examined by the prosecution. The said application came to be rejected by the learned J.M.F.C. by Order dated 10.11.04. In rejecting the application, the learned J.M.F.C. observed that the said application was filed only on

25.8.04 and between the examination of said P.W.7 (I.O.) on 25.9.02 there were 26 occasions when the case had to be adjourned for examination of the Medical Officer who was subsequently examined as P.W.8. The learned J.M.F.C. also observed that in order to secure the presence of the said P.W.8 (Medical Officer) even the help of P.W.7 - I.O. was taken, but the prosecution during all the aforesaid 26 hearings, had not taken any steps to re-examine the said P.W.7-I.O. and it is only when the matter had come up for final hearing of arguments that the prosecution had chosen to file the said application which in the opinion of the learned J.M.F.C. was intended to further lengthen the trial, if allowed. The State moved a revision application before the Court of Sessions, Margao being Criminal Revision Application No.69/04 which came to be dismissed by Order dated 17.2.05.

Considering what was set out by the learned J.M.F.C. in his order, the learned Sessions Judge felt that the case was not fit to extend a helping hand to the prosecution. It appears from what has been submitted by Shri Sardessai that P.W.7-I.O. was sought to be recalled to prove the contradictions in the evidence of P.W.6 who was declared hostile and was cross-examined. Even in case the said application was granted, it would not practically help the case of the prosecution in any manner.

In my view no interference is called for with the Orders of both the Courts below. Hence the application is hereby rejected.

Authenticated copy may be issued as requested by P.P.

N. A. BRITTO, J.